

2011 SEP 27 PM 4: 48

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
)  
MUR 6456 ) DISMISSAL AND  
LIBERATORE FOR CONGRESS ) CASE CLOSURE UNDER  
COMMITTEE AND LOUIS G. ) THE ENFORCEMENT  
BAGLIETTO, JR., AS TREASURER ) PRIORITY SYSTEM  
PHILIP LIBERATORE )  
KIMBERLY LEPINS )

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases or, when the allegations are speculative and are sufficiently refuted by the responses, to make no reason to believe findings.

For the reasons set forth below, this Office recommends that the Commission make no reason to believe findings as to Philip Liberatore, Liberatore for Congress Committee and Louis G. Baglietto, Jr., in his official capacity as treasurer ("the Committee") for violating 2 U.S.C. § 441a(f), and make no reason to believe finding as to Kimberly Lepins

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1 for violating 2 U.S.C. § 441a(a)(1)(A). This Office also recommends that the Commission  
2 dismiss allegations against the Committee for violating 2 U.S.C. § 434(b).

3 In this matter, the complainant, Kerry Wilson, alleges that the Committee, and the  
4 candidate, Philip Liberatore, accepted an "illegal \$150,000 personal loan" from a supporter,  
5 Kimberly Lepins, and that Kimberly Lepins made a \$150,000 contribution to the  
6 Committee.<sup>1</sup> According to the complaint, the Committee accepted a \$150,000 loan from  
7 Philip Liberatore on June 6, 2010,<sup>2</sup> but subsequently reported this loan on its 2010 July  
8 Quarterly, 2010 October Quarterly, and 2010 Year-End Reports as coming from Kimberly  
9 Lepins. The complaint also asserts that the Committee and Philip Liberatore "falsified FEC  
10 documents to hide original source of \$150,000 loan granted on June 6, 2010," and alleges  
11 that accepting zero percent interest on the loan was a violation of federal law.

12 In response, the Committee denies the allegations in the complaint. The Committee  
13 states that "a loan previously made by Philip Liberatore to the campaign was subsequently  
14 listed as being made by Kimberly Lepins," but states that the complainant "incorrectly  
15 alleges that such a loan was actually made." The Committee treasurer emphasizes that  
16 Lepins "never" (emphasis in original) made a loan to the Committee, and notes that "[a]fter  
17 a review of the Campaign accounts and files, I must assume that it is a result of clerical  
18 error or system malfunction." The Committee's treasurer further states that he has "begun

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<sup>1</sup> Philip Liberatore was a candidate in California's 42nd Congressional District for 2010.

<sup>2</sup> The Committee initially reported this loan from Philip Liberatore on a FEC Form 6 (48-Hour Notice), which was filed on June 7, 2010. California held its primary election for Congress on June 8, 2010.

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1 an internal review to ensure that there are no other errors in the campaign filings and will  
2 make all necessary amendments to the previous reports.”<sup>3</sup>

3 Kimberly Lepins responds that she only made a \$50 contribution to the Committee  
4 and based on her bank accounts, she is in “no position to ‘loan’ anyone \$150,000.”  
5 Ms. Lepins also states that she spoke to a person in Philip Liberatore’s office, who stated  
6 that this was an error and they would be correcting any Committee report indicating that  
7 she made a loan.

8 The federal limitation on contributions to authorized committees in 2010 was  
9 \$2,400. See 2 U.S.C. § 441a(a). Therefore, no person was permitted to make contributions  
10 to any candidate or and his or her authorized committee with respect to any federal election  
11 for federal office which exceeded \$2,400. 2 U.S.C. § 441a(a)(1)(A). Moreover, no  
12 candidate or political committee could knowingly accept any contribution or make any  
13 expenditure in violation of the provisions of section 441. 2 U.S.C. § 441a(f). The term  
14 “contribution” includes any gift, subscription, loan, advance, or deposit of money or  
15 anything of value made by any person for the purpose of influencing any election for  
16 Federal office. 2 U.S.C. § 431(8)(A). The Committee has denied receiving a \$150,000  
17 loan from Ms. Lepins and claims that its reporting of the loan was the result a clerical error  
18 or system malfunction. The Committee initially reported the \$150,000 on its 48-hour  
19 notice as a loan from Philip Liberatore, but subsequently reported it from Kimberly Lepins  
20 on three separate disclosure reports. Thereafter, the Committee filed amended reports  
21 indicating that the candidate made the loan. Additionally, Ms. Lepins denied making the

<sup>3</sup> On April 15, 2011, the Committee amended its 2010 July Quarterly, 2010 October Quarterly and 2010 Year-End Reports to reflect that Philip Liberatore, rather than Kimberly Lepins, made the \$150,000 loan to the Committee on June 6, 2010. On April 8, 2011, the Reports Analysis Division sent the Committee a Request for Additional Information (“RFAI”) regarding a possible excessive contribution from Kimberly Lepins concerning this loan.

1 loan to the Committee. We have no information that contradicts the respondents'  
2 assertions.

3 Since the Committee has denied receiving a loan from Kimberly Lepins and has  
4 also determined that its reports concerning the loan were erroneous, it appears that  
5 Ms. Lepins did not make an excessive contribution to the Committee and the Committee  
6 did not accept an excessive contribution from Ms. Lepins. Thus, the Office of General  
7 Counsel recommends that the Commission find no reason to believe that Liberatore for  
8 Congress Committee and Philip Liberatore accepted an excessive contribution from  
9 Kimberly Lepins in violation of 2 U.S.C. § 441a(f). Additionally, this Office recommends  
10 that the Commission find no reason to believe that Kimberly Lepins made an excessive  
11 contribution to the Committee in violation of 2 U.S.C. § 441a(a)(1)(A).

12 The Act provides that each report shall identify the person who makes a loan to the  
13 reporting committee during the reporting period, together with the identification of any  
14 endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C.  
15 § 434(b)(3)(E). The Committee reported a \$150,000 loan, dated June 6, 2010, from  
16 Kimberly Lepins on its 2010 July Quarterly, 2010 October Quarterly and 2010 Year-End  
17 Reports, but nevertheless states in its response that Ms. Lepins made no such loan to the  
18 Committee. Instead, the Committee believes that the listing of Ms. Lepins as the source of  
19 the loan was the result of a clerical error or system malfunction. To address the situation,  
20 the Committee filed the necessary amended disclosure reports, which now reflect that  
21 Philip Liberatore made the \$150,000 loan on June 6, 2010.

22 Although the Committee made an apparent error in disclosing the wrong source of a  
23 \$150,000 loan, on three disclosure reports, it has taken remedial action in filing amended

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1 reports showing that the candidate, Philip Liberatore, was the person who made the loan.  
2 Thus, further Enforcement action does not appear to be warranted. Accordingly, under  
3 EPS, the Office of General Counsel has scored MUR 6456 as a low-rated matter and,  
4 therefore, in furtherance of the Commission's priorities as discussed above, the Office of  
5 General Counsel believes that the Commission should exercise its prosecutorial discretion  
6 and dismiss the allegation that Liberatore for Congress Committee and Louis G Baglietto,  
7 Jr. in his official capacity as treasurer, violated 2 U.S.C. § 434(b). *See Hackler v. Cheney*,  
8 470 U.S. 821 (1985).

9 **RECOMMENDATIONS**

- 10 1. Find no reason to believe that Liberatore for Congress Committee and Louis  
11 Baglietto, Jr., in his official capacity as treasurer, and Philip Liberatore violated  
12 2 U.S.C. § 441a(f).  
13  
14 2. Find no reason to believe that Kimberly Lepias violated 2 U.S.C.  
15 § 441a(a)(1)(A).  
16  
17 3. Dismiss the allegation that Liberatore for Congress Committee and Louis G.  
18 Baglietto, Jr., in his official capacity as treasurer, violated 2 U.S.C. § 434(b).  
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20 4. Close the file and, approve the appropriate letters.

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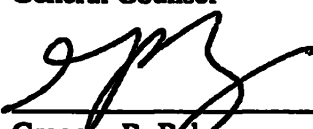
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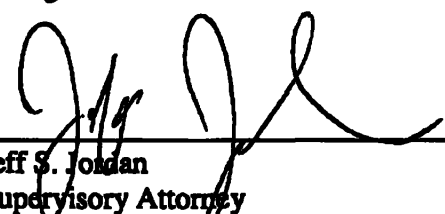
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